

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UTELL INTERNATIONAL, INC., A SUBSIDIARY OF  
UTELL INTERNATIONAL (UK) LIMITED <sup>1</sup>

and

Case 2--CA--20111

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA,  
AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 5 January 1984, the General Counsel of the National Labor Relations Board issued a complaint 16 January 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 4 November 1983, following a Board election in Case 2--RC--19300, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and

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<sup>1</sup> In its answer to the complaint, Utell International, Inc., admitted the jurisdictional facts alleged in the complaint but stated in clarification that Utell International (UK) Limited, a British corporation, is the entity engaged in the business described in the complaint and that Utell International, Inc., which technically continues to exist as a subsidiary of Utell International (UK) Limited, is dormant. In his Motion for Summary Judgment the General Counsel accepted this modification and refers to the Respondent as Utell International, Inc., a subsidiary of Utell International (UK) Limited. Our decision reflects this modification.

102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since about 20 December 1983 the Company has refused to bargain with the Union. On 23 January 1984 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 8 March 1984 the General Counsel filed a Motion for Summary Judgment. On 9 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

The Company's answer admits its refusal to bargain. However, in its response to the General Counsel's Motion for Summary Judgment, the Company attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 2--RC--19300, reveals that an election was held 10 June 1982 pursuant to a Stipulated Election. The tally of ballots shows that of approximately 35 eligible voters, 19 cast ballots for and 14 against the Union, there was 1 challenged ballot, a number insufficient to affect the results of the election. Thereafter, the Respondent filed timely objections to the election alleging, in substance, that the Union or others acting on its behalf (1) threatened employees with physical harm and loss of jobs if they refused to vote for it; (2) sent false, defamatory, and threatening letters to several of the Respondent's supervisors and then falsely told

employees that the letters were sent by the Respondent; (3) made false and inflammatory statements about the Respondent's legal counsel including calling such counsel 'union busters'; (4) made false, inflammatory, and threatening statements concerning the Black and Puerto Rican employees in the unit to get them to vote for the Union; and (5) by other acts unlawfully destroyed laboratory conditions necessary for a free and fair election.

On 24 June 1982 the Regional Director directed a hearing on the Respondent's objections but, on appeal by the Union of the direction of a hearing, the Board ordered the Regional Director to conduct an administrative investigation and the hearing was canceled. Thereafter, the Regional Director caused an administrative investigation to be conducted and subsequently ordered a hearing to resolve substantial and material issues of fact raised by the objections. On 6 January 1983 the hearing officer issued a report recommending that the Respondent's objections be overruled and a certification of representative be issued. The Respondent filed timely exceptions to the hearing officer's report. On 4 November 1983 the Board adopted the hearing officer's findings and recommendations and certified the Union as the exclusive bargaining agent of the employees in the unit stipulated to be appropriate. It thus appears that the Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

The Company, a subsidiary of UK Limited, a British corporation, is engaged in the business of providing travel reservations on a nonretail basis for hotel clients and in the nonretail marketing and sale of hotel room reservations to travel agents at its facility in New York, New York, where it annually performs services for its client hotels and travel agents valued in excess of \$50,000 <sup>2</sup> in States other than the State of New York. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>2</sup> The complaint alleges that the Respondent performed services valued in excess of '\$50,00' in States other than the State of New York, however, in the Stipulated Agreement the Respondent stipulated that during the preceding year it had derived revenues in excess of \$50,000 directly from its hotel clients located outside the State of New York. We also note that neither the Respondent's answer to the complaint nor its response to the Motion for Summary Judgment alleges that it failed to meet the Board's jurisdictional standard. Thus we conclude that the correct figure is \$50,000 and that the complaint's use of '\$50,00' is, as it appears on the face to be, an inadvertent error.

## II. Alleged Unfair Labor Practices

### A. The Certification

Following the election held 10 June 1982, the Union was certified 4 November 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time computer operators, assistant computer operators, telex operators, mailroom clerk, fiche department clerks, paytell department clerks, cheque processing clerks, junior clerks, airline reservations clerks, computer airline operators, reservations clerks, hotel liaison clerks, and airline junior clerks employed by the Employer at 119 W. 57 Street, New York, New York, but excluding all directors, managers, assistant managers, vice presidents, administrative assistants to the director of administration, reservation supervisors, all other employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since about 9 December 1983 the Union has requested the Company to bargain, and since about 20 December 1983 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### Conclusions of Law

By refusing on and after 20 December 1983 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Utell International Inc., a subsidiary of Utell International (UK) Limited, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 1101, Communications Workers of America, AFL--CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of

employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time computer operators, assistant computer operators, telex operators, mailroom clerk, fiche department clerks, paytell department clerks, cheque processing clerks, junior clerks, airline reservations clerks, computer airline operators, reservations clerks, hotel liaison clerks, and airline junior clerks employed by the Employer at 119 W. 57 Street, New York, New York, but excluding all directors, managers, assistant managers, vice presidents, administrative assistants to the director of administration, reservation supervisors, all other employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "'Appendix.'"<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>3</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 30 April 1984

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Donald L. Dotson, Chairman

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Don A. Zimmerman, Member

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Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD



## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 1101, Communications Workers of America, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time computer operators, assistant computer operators, telex operators, mailroom clerk, fiche department clerks, paytell department clerks, cheque processing clerks, junior clerks, airline reservations clerks, computer airline operators, reservations clerks, hotel liaison clerks, and airline junior clerks employed by the Employer at 119 W. 57 Street, New York, New York, but excluding all directors, managers, assistant managers, vice presidents, administrative assistants to the director of administration, reservation supervisors, all other employees, guards, and supervisors as defined in the Act.

UTELL INTERNATIONAL, INC.,  
A SUBSIDIARY OF UTELL  
INTERNATIONAL (UK) LIMITED

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278, Telephone 212--264--0360.